

Nuclear Regulatory Commission

§ 2.605

§ 2.604 Notice of hearing on application for early review of site suitability issues in construction permit proceeding.

(a) Where an applicant for a construction permit requests an early review and hearing and an early partial decision on issues of site suitability pursuant to § 2.101(a-1), the provisions in the notice of hearing setting forth the matters of fact and law to be considered, as required by § 2.104, shall be modified so as to relate only to the site suitability issue or issues under review.

(b) After docketing of part two of the application, as provided in §§ 2.101(a-1) and 2.603, a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. This supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene pursuant to § 2.309 within the time prescribed in the notice. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene as a party under the initial notice of hearing on site suitability issues and who was not dismissed or did not withdraw as a party may continue to participate as a party to the proceeding with respect to the remaining unresolved issues, provided that within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, he or she files a notice of his intent to continue as a party, along with a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which he or she wishes to continue to participate as a party and setting forth with particularity the basis for his contentions with regard to each aspect or aspects. A party who files a non-timely notice of intent to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good

cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(d) To the maximum extent practicable, the membership of any atomic safety and licensing board designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the membership designated to preside in the initial notice of hearing on site suitability issues.

§ 2.605 Additional considerations.

(a) The Commission will not conduct more than one review of site suitability issues with regard to a particular site prior to filing and review of part two of the application described in § 2.101(a-1) of this part.

(b) The Commission, upon its own initiative, or upon the motion of any party to the proceeding filed at least 60 days prior to the date of the commencement of the evidentiary hearing on site suitability issues, may decline to initiate an early hearing or render an early partial decision on any issue or issues of site suitability:

(1) In cases where no partial decision on the relative merits of the proposed site and alternative sites under subpart A of part 51 of this chapter is requested, upon determination that there is a reasonable likelihood that further review would identify one or more preferable alternative sites and the partial decision on one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the remainder of the information required by § 50.30(f) of this chapter that would prejudice the later review and decision on such alternative sites; or

(2) In cases where it appears that an early partial decision on any issue or issues of site suitability would not be in the public interest considering:

(i) The degree of likelihood that any early findings on those issues would retain their validity in later reviews;

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(ii) The objections, if any, of cognizant State or local government agencies to the conduct of an early review on those issues; and

(iii) The possible effect on the public interest and the parties of having an early, if not necessarily conclusive, resolution of those issues.

§ 2.606 Partial decision on site suitability issues in construction permit proceeding.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. No construction permit or combined license may be issued without completion of the full review required by Section 102(2) of the NEPA, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision *sua sponte*, or to raise *sua sponte* an issue that has not been raised by the parties, will be exercised within the same time as in the case of a full decision relating to the issuance of a construction permit or combined license.

(b)(1) A partial decision on one or more site suitability issues pursuant to the applicable provisions of part 50, subpart A of part 51, and part 100 of this chapter issued in accordance with this subpart shall:

(i) Clearly identify the site to which the partial decision applies; and

(ii) Indicate to what extent additional information may be needed and additional review may be required to enable the Commission to determine in accordance with the provisions of the Act and the applicable provisions of the regulations in this chapter whether a construction permit for a facility to be located on the site identified in the partial decision should be issued or denied.

(2) Following either the Commission (acting in the function of a presiding officer) issuance of a partial initial decision, or completion of Commission review of the partial initial decision of the Atomic Safety and Licensing Board, after hearing, on the site suitability issues, the partial decision shall

remain in effect either for a period of 5 years or, where the applicant for the construction permit has made timely submittal of the information required to support the application as provided in § 2.101(a–1), until the proceeding for a permit to construct a facility on the site identified in the partial decision has been concluded,³ unless the Commission or Atomic Safety and Licensing Board, upon its own initiative or upon motion by a party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions and reopens the hearing record on site suitability issues. Upon good cause shown, the Commission may extend the 5-year period during which a partial decision shall remain in effect for a reasonable period of time not to exceed 1 year.

[72 FR 49479, Aug. 28, 2007, as amended at 72 FR 57440, Oct. 9, 2007]

EARLY PARTIAL DECISIONS ON SITE SUITABILITY—COMBINED LICENSE UNDER 10 CFR PART 52

§ 2.621 Acceptance and docketing of application for early review of site suitability issues in a combined license proceeding.

(a) Each part of an application submitted in accordance with § 2.101(a–1) of this part will be initially treated as a tendered application. If it is determined that any one of the parts as described in § 2.101(a–1) is incomplete and not acceptable for processing, the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of 30 days.

(b)(1) The Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will accept for docketing an application for a combined license

³The partial decision on site suitability issues shall be incorporated in the decision regarding issuance of the combined license to the extent that it serves as a basis for the decision on a specific site issue.